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**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

Docket No. AB-397 (Sub-No. 7X)

**TULARE VALLEY RAILROAD COMPANY
--ABANDONMENT EXEMPTION--
IN TULARE COUNTY, CA**

**JOINT TRAIL USE STATEMENT
OF K&M PROPERTIES ONE, LLC
AND AMERICAN TRAILS ASSOCIATION, INC.**

ENTERED
Office of Proceedings
FEB - 2 2011
Part of
Public Record

**Fritz R. Kahn
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Attorney for

**AMERICAN TRAILS ASSOCIATION, INC.
K&M PROPERTIES ONE, LLC**

Dated: February 2, 2011

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WASHINGTON, DC**

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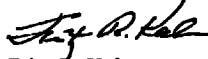
Pursuant to 49 C.F.R. §1152.29, the trail user, American Trails Association, Inc., intends to terminate trail use, and another person, K&M Properties One, LLC, intends to become the trail user by assuming financial responsibility for the right-of-way.

1. A copy of the Decision and Notice of Interim Trail Use or Abandonment, served May 11, 2010, is attached as Exhibit A.
2. The Statement of Willingness to Assume Financial Responsibility of K&M Properties One, LLC, is attached as Exhibit B.
3. The parties wish responsibility for the right-of-way to be transferred to the new trail user February 23, 2010.
4. A letter authorizing the undersigned to represent both parties is attached as Exhibit C.

Respectfully submitted,

AMERICAN TRAILS ASSOCIATION, INC.
K&M PROPERTIES ONE, LLC

By their attorney,



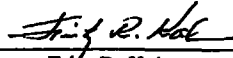
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Dated: February 2, 2011

CERTIFICATE OF SERVICE

A copy of the foregoing Joint Trail Use Statement was served upon Tulare Valley
Railroad Company by e-mailing a copy to its attorney, Michael J. Van Wagenen, Esq.

Dated at Washington, DC, this 2nd day of February 2011.



Fritz R. Kahn

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 397 (Sub-No. 7X)

TULARE VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
TULARE COUNTY, CAL.

Decided: May 7, 2010

On July 1, 2009, Tulare Valley Railroad Company (TVR), filed a notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon a 5.9-mile line of railroad between milepost 71+2969.2 at or near Ducor and milepost 66.0 at or near Ultra, in Tulare County, Cal. Notice of the exemption was served and published in the Federal Register on July 21, 2009 (74 Fed. Reg. 35,904). The exemption became effective on August 20, 2009.

By decision served August 19, 2009, the Board imposed a condition on the abandonment under section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, requiring TVR to retain its interest in and take no steps to alter historic properties on the line until the effect of the abandonment on those properties was considered. In a decision served December 1, 2009, the Board denied a TVR petition for reconsideration of the prior decision on grounds that the agency had not committed material error in imposing the section 106 condition in the case.

By letter filed February 18, 2010, TVR asserts that a stalemate continues over the section 106 process between the Board and the California State Historic Preservation Officer (Cal. SHPO). According to TVR, because the Board itself failed to send a letter to the Cal. SHPO formally initiating the section 106 process in this proceeding, the Cal. SHPO declined to consider TVR's Historic Report. TVR adds that it is left with no alternative but to ask the Board for a 6-month extension, to February 20, 2011, of the date by which it must file its notice of consummation of abandonment in this case.¹

TVR is incorrect that the section 106 process in this proceeding is deadlocked. Following a conference call with the Advisory Council on Historic Preservation and the Cal. SHPO, on December 10, 2009, the Board's Section of Environmental Analysis (SEA) sent a letter to all State Historic Preservation Officers (SHPOs) nationwide, including the Cal. SHPO, and all Tribal Historic Preservation Officers (THPOs), informing them that TVR and its authorized representatives may consult directly with SHPOs and THPOs to initiate the section 106 review. Moreover, the Cal. SHPO has been in communication with TVR's legal counsel,

¹ While this extension will be granted, it appears to be unnecessary, given that both the section 106 condition and the NITU issued herein operate as bars to consummation. See 49 C.F.R. § 1152.29(e)(2).

requesting information needed to move the section 106 process forward. As such, the Cal. SHPO no longer requires a letter from the Board, but is instead awaiting the submission of additional information by TVR in order to move the section 106 process forward in this proceeding.

On March 9, 2010, American Trails Association, Inc. (ATA) filed a petition for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act) in order to negotiate with TVR for acquisition of the right-of-way for use as a recreational trail. ATA also submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 C.F.R. § 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service. In a letter filed on March 12, 2010, TVR indicated its willingness to negotiate with ATA for interim trail use.

Because ATA's request complies with the requirements of 49 C.F.R. § 1152.29 and TVR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, TVR may fully abandon the line, subject to prior completion of the section 106 process. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on July 21, 2009, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 180 days commencing from the effective date of this order until November 7, 2010.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by November 7, 2010, interim trail use may be implemented. If no agreement is reached by that time, TVR may fully abandon the line, subject to prior completion of the section 106 process.

7. TVR's request for an extension of time to consummate the abandonment is granted.

8. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before February 2, 2011.

9. This decision and notice is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Statement of Willingness to Assume
Financial Responsibility

In order to establish interim trail use and rail banking under the National Trails System Act, 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29, K&M Properties One, LLC is willing to assume full responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the use is immune from liability, in which case it need only indemnify the railroad against any potential liability) and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and formerly operated by the Tulare Valley Railroad Company and currently held by American Trails Association, Inc. for trail use/rail banking. The property extends between Milepost 71+2969.2 at or near Ducor and Milepost 66.0 at or near Ultra, a distance of 5.9 miles in Tulare County, CA. The right-of-way is part of the line of railroad which was authorized to be abandoned pursuant to the Notice of Exemption, served July 21, 2009, 74 Fed. Reg. 35904, July 21, 2009. A map of the railroad line depicting the right-of-way is attached.

K&M Properties One, LLC acknowledges that use of the right-of-way is subject to the user's continuing obligation to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail use.

A copy of this statement is being served on the Tulare Valley Railroad Company on the same date it is being filed with the Board.

K & M PROPERTIES ONE, L.L.C.

P.O. Box 30076 • Salt Lake City, UT 84130 • Phone (801) 977-6357 • Fax (801) 977-9387

January 29, 2011

Fritz Kahn, Esq.
Attorney at Law
Eighth Floor
1920 N Street, N.W.
Washington, D.C. 20036-1601

RE: Interim Trail Use assignment and assumption of
financial responsibility between MP 71+2969.2
near Ducor, CA and MP 66.0 near Ultra, CA ("Trail")

Dear Mr. Kahn:

This will serve to confirm that K & M Properties One LLC, ("K&M") has no objection in having you represent both K&M and the American Trails Association, Inc. ("ATA") in the assignment of the Trail from ATA to K&M. Thank you for your assistance.

Sincerely yours,


Kern W. Schumacher, Member